

CASE: PORTFOLIO REC. V. BASILE

PROCEEDING: HEARING

CASE NO.: 07 M1 171751

DATE: JANUARY 3, 2008

LORIE A. RICHMOND, CSR, RMR, CRR 15450 WESTVIEW DRIVE

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CASE NO.: 07 M1 171751  
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<p>Page 1</p> <p>1 STATE OF ILLINOIS ) 2 COUNTY OF C O O K ) SS: 3 4 IN THE CIRCUIT COURT OF COOK COUNTY MUNICIPAL DEPARTMENT - FIRST DISTRICT 5 PORTFOLIO RECOVERY ASSOCIATES, LLC, ) 6 Plaintiff, ) 7 vs. ) No. 2007 M1 171751 8 DOMINIC BASILE, ) 9 Defendant. ) 10 11 12 REPORT OF PROCEEDINGS at the hearing 13 in the above-entitled case, taken at The Fifth Municipal 14 District, Circuit Court of Cook County, 10220 S. 76th 15 Avenue, before the HONORABLE JANET ADAMS BROSNAHAN, 16 Judge of said Court, on the 3rd day of January, 2008, at 17 10:20 a.m. 18 19 20 21 22 23 24</p>	<p>Page 3</p> <p>1 THE COURT: Portfolio Recovery versus Basile. 2 MR. JOHNSON: Mark Johnson on behalf of 3 Plaintiff. 4 MR. PHILLIPPS: Morning, Judge. David Philipps 5 on behalf of Dominic Basile. 6 THE COURT: Good morning. First, some 7 preliminary matters really for my own personal 8 knowledge. I was about to call both of you to strike 9 this hearing because I had not received courtesy copies. 10 I did receive courtesy copies finally yesterday. 11 And I'm wondering — the courtesy copies 12 I received yesterday were dated 12-28. When in fact 13 were they delivered? 14 MR. PHILLIPPS: Judge, I took care of that 15 because it's my motion. And my staff dropped it off on 16 12-28. Nobody was here. We had to drop it off next 17 door. And they promised to give it to your Honor. They 18 were due on 12-29 — 19 THE COURT: Right. I know that. 20 MR. PHILLIPPS: — which is a Saturday, 21 obviously. But they were dropped off on Friday when we 22 filed our motion. 23 THE COURT: Because I was here on the 28th and I 24 was here on the 31st and I was looking for them.</p>
<p>Page 2</p> <p>1 PRESENT: 2 BLATT HASENMILLER LEIBSKER &amp; MOORE MR. MARK J. JOHNSON 3 125 S. Wacker Drive, Suite 400 Chicago, Illinois 60606 4 (312) 704-9440 5 appeared on behalf of the Plaintiff; 6 PHILLIPPS &amp; PHILLIPPS, LTD. By MR. DAVID J. PHILLIPPS 7 9760 S. Roberts Road, Suite One Palos Hills, Illinois 60465 8 (708) 974-2900 9 appeared on behalf of the Defendant. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>Page 4</p> <p>1 Like I said, I was about to strike this. And it 2 probably would have been stricken, except that I have no 3 secretary to make the phone call, and then they did get 4 to me yesterday. And I wondered how — you know, what 5 was the delay. 6 MR. PHILLIPPS: Yes. The letter was dated — it 7 was dropped off on Friday as we filed our motion. My 8 office is right around the corner. And my staff came 9 over on Friday cursing my name because I had them there 10 working on Friday before New Year's weekend. But it was 11 dropped off the day the letter is dated, Judge. 12 If you want to enter and continue the 13 hearing to another day — 14 THE COURT: No. I'm ready. I — I'm ready. 15 But I will get them on the day they are delivered if 16 they are given either to my secretary or to any 17 secretary in the presiding judge's office. They'll come 18 to me with, you know, any other deliveries that day. 19 I don't know — if they're not given to 20 my regular clerk, I suppose that's the reason. If they 21 go through a few clerks' hands, then there's a delay 22 involved. 23 So, just for future reference, if it 24 comes up, give them to my secretary or to the secretary</p>

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1 in the presiding judge's office and I'll be sure to get  
2 them on time.

3 MR. PHILIPPS: Yes. And I was told it was given  
4 to the — I think to 204. That was the only person they  
5 could find, Judge. I'm sorry about that.

6 THE COURT: That's all right.

7 Okay. Now, with regard to the merits of  
8 the motion, it's a combined motion to dismiss. And I  
9 think there are several very good arguments to be made  
10 why it should be dismissed. And I think that — well,  
11 let me say this. I gave much consideration to  
12 dismissing it with prejudice. But I'm not going to  
13 dismiss it with prejudice, because some things are  
14 unclear with regard to the facts which may be alleged  
15 that may allow the Plaintiff to file a complaint which  
16 can withstand a motion to dismiss.

17 Maybe there are those facts out there  
18 that haven't been plead. And if they're in — within  
19 the knowledge of the plaintiffs, I can't determine at  
20 this time that you are incapable of filing a complaint  
21 which will withstand a motion to dismiss.

22 I have serious questions as to whether or  
23 not you're able to file a complaint which can withstand  
24 a motion to dismiss based upon the arguments which were

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1 raised by defense in this matter. But I can't reach a  
2 definite conclusion.

3 And let me go over some of these things  
4 point by point. When you file an amended complaint, if  
5 you decide to file an amended complaint, I would expect  
6 to see a paragraph addressing the argument that the  
7 Plaintiff is not — doesn't have standing to file a  
8 lawsuit in the state of Illinois. I was asked to take  
9 judicial notice of the fact that this LLC is not  
10 registered with the Secretary of State. And there was  
11 no response to that in the response to the motion to  
12 dismiss.

13 But if this company doesn't have standing  
14 to bring a lawsuit as a plaintiff in the state of  
15 Illinois, don't try to do it. And if you do have  
16 standing, then the basis for that standing should be  
17 articulated in your complaint.

18 I agree that the complaint which was  
19 filed is pled as an account stated. And then it has  
20 been argued that the statute of limitations for a  
21 contract is that which should be applied by Plaintiff.  
22 We're mixing apples and oranges. Either it's an account  
23 stated or it's a contract. If it's an account stated,  
24 then I need to know when the account stated action

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1 began — or when the statute of limitations began to be  
2 counted.

3 And with regard to that issue, there is  
4 no allegation in the complaint that would establish when  
5 the cause of action began to accrue. In my research on  
6 the issue, specifically in the case of Toth Sr., T-o-t-h  
7 Sr. versus Mansell, M-a-n-s-e-l-l, at 207 Ill.App.3d  
8 665, a First District opinion in 1991, the Court said  
9 "We find that when an open account becomes an account  
10 stated by virtue of the debtor's receipt without  
11 objection of a statement, then the cause of action on  
12 the account stated accrues; thus, the Plaintiff's cause  
13 of action on an account stated accrued during 1980 when  
14 Plaintiff first sent" — or I'm sorry — "when Plaintiff  
15 sent the first statement to defendant. Since an action  
16 not otherwise provided for in the Code of Civil  
17 Procedure is governed by a five-year statute of  
18 limitations, Plaintiff's claim was not timely."

19 In this particular case, the plaintiff  
20 blew the statute of limitations. But the important date  
21 is when the first statement was made by the plaintiff to  
22 the defendant of what the outstanding account was.  
23 That's when the cause of action accrues. And five years  
24 after that date is when the statute of limitations

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1 expires.

2 I don't know what that alleged date is in  
3 this case. If you're going to make an account statement  
4 claim, you're going to have to give me that date. I  
5 would guess that — based upon the fact that this  
6 account was purchased by your client and the account  
7 stated was probably made by the former holder of the  
8 account, that this five years has probably elapsed. But  
9 I can't make a guess. And you have to provide me with  
10 that information so that we can know when the cause  
11 began.

12 Now, alternatively, I suppose you're not  
13 precluded from trying to articulate a breach of contract  
14 claim. But if you're going to do it, you've got to do  
15 it the right way. Your current complaint has not made a  
16 claim for breach of contract. And as defense counsel  
17 pointed out, there is no contract attached. Obviously,  
18 if you're going to do it, it's got to be pled the right  
19 way, and it's not.

20 So, you do have an opportunity to try to  
21 correct some of these defects. Whether or not you're  
22 going to be able to do that, I'm not certain. But I'll  
23 give you the chance. I'll give you 28 days to file an  
24 amended complaint.

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1 MR. PHILIPPS: Do you want to set a short  
2 status after that, Judge, so that we can tell you if  
3 we're going to answer or otherwise plead?  
4 THE COURT: Yes. But let me just -- this is  
5 something I noticed, and I thought am I missing  
6 something? I'm going back to your -- let's see --  
7 Defendant's Reply in Support of Motion to Dismiss.  
8 There are numerous references to the purported original  
9 creditor, Providian. Where does Providian come in? Was  
10 that just a mistake?  
11 MR. JOHNSON: I might be able to explain that,  
12 Judge. I think Mr. Philipps does a lot of work for  
13 creditors. He might have -- we've seen this motion  
14 before. It could be just a form error. He might have  
15 put that in by accident or by error. I don't think  
16 that's anything but an error.  
17 MR. PHILIPPS: Judge, to just briefly correct  
18 learned Plaintiff's counsel, I don't do any work for  
19 creditors.  
20 MR. JOHNSON: I'm sorry. Debtors. I apologize.  
21 It all just depends on the situation.  
22 MR. PHILIPPS: We're not quite sure who the  
23 creditor is, Judge. Our client doesn't recognize the  
24 account in any way, shape, or form. They mention First

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1 USA. He thinks it might be something with Providian.  
2 But we're not sure. We're not sure, Judge.  
3 THE COURT: Well, here. Just be careful,  
4 because what I'm seeing here -- in Defendant's Reply in  
5 Support of Motion to Dismiss, there's a reference. It  
6 says Plaintiff, Portfolio Recovery, Providian LLC  
7 (Portfolio). Okay. Portfolio is the name of the  
8 plaintiff. Then later on the reference is to the  
9 original credit agency referred to as Providian. I  
10 don't know who Providian is. I looked at this and I  
11 thought, well, maybe the reference is supposed to be  
12 First USA Bank.  
13 MR. PHILIPPS: We're not -- that's the problem,  
14 Judge, is we're not sure because these debts -- as these  
15 credit card companies get purchased by other credit card  
16 companies and then they sell off the money --  
17 MR. JOHNSON: Judge, what he's saying is  
18 irrelevant. It sounds like it's a typical scrivener's  
19 error, if anything. Like I said, Mr. Philipps does  
20 represent in federal cases under the FDCPA, and against  
21 us, probably a good number of defendants or debtors in  
22 these situations. It's a form motion. We've seen it  
23 before. We've answered it before. It was probably  
24 missed when they took out the proper names of the

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1 parties. I don't think of it as anything else other  
2 than a scrivener's error at this time.  
3 THE COURT: Okay. I sort of determined that  
4 that was likely the case. But I just wanted to bring it  
5 up because it confused me a little bit. As I was  
6 reading this, I couldn't find any party named Providian.  
7 All right. So, motion to dismiss is  
8 granted. Twenty-eight days to file an amended  
9 complaint, if Plaintiff chooses to do so. That brings  
10 us to the 31st of January.  
11 MR. JOHNSON: Judge, I apologize. Just to  
12 clarify, the motion to dismiss that's granted, that's a  
13 motion to dismiss under 2-615, since you're allowing us  
14 time to amend our complaint? 2-615 I believe would be  
15 the proper statute for being allowed time to amend our  
16 complaint and setting a status date. Otherwise, a 2-619  
17 would kill the cause of action entirely.  
18 THE COURT: Just a minute. It is pursuant to  
19 2-615. And that is not because there wasn't some merit  
20 to the statute of the limitations issues raised under  
21 2-619; but I cannot determine, based upon the way the  
22 complaint is pled, whether or not the statute of  
23 limitations defense is viable and applicable in light of  
24 the way that it was pled --

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1 MR. JOHNSON: I understand.  
2 THE COURT: -- so it is 2-615.  
3 MR. JOHNSON: I apologize for interrupting,  
4 Judge.  
5 THE COURT: Sure. All right. So the amended  
6 pleading, if any, will be filed by January 31st.  
7 MR. PHILIPPS: Judge, may I make a suggestion on  
8 a follow-up date?  
9 THE COURT: Sure.  
10 MR. PHILIPPS: I'm in front of your Honor on  
11 February 21st. And by then, if they do replead, we  
12 could have a motion on file, if that's appropriate, and  
13 deal with it all at once in such a manner, if the 21st  
14 is available.  
15 THE COURT: It's available.  
16 MR. JOHNSON: Judge, it's not available for me.  
17 Is there any way we can move that to the 22nd?  
18 MR. PHILIPPS: I'd be happy to come on around  
19 the corner, Judge.  
20 THE COURT: All right. So it'll be set only for  
21 status on the 22nd. But, of course, if a motion to  
22 dismiss is filed, then we'll set a new briefing schedule  
23 on that issue.  
24 MR. PHILIPPS: And that's what we'll try to do

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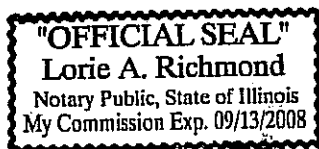
1 Judge, is to make it, you know, one-stop shopping for  
2 everybody.  
3 THE COURT: All right. Sounds good. Thank you.  
4 MR. PHILLIPS: Thank you much, Judge.  
5 MR. JOHNSON: Thank you, Judge.  
6 (Whereupon, at 10:35 a.m. the hearing was  
7 concluded.)  
8 \* \* \*

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1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF COOK )  
4  
5 I, LORIE A. RICHMOND, CSR, do hereby  
6 certify that I reported in shorthand the proceedings had  
7 at the hearing aforesaid, and that the foregoing is a  
8 true, complete, and accurate transcript of the  
9 proceedings at said hearing as appears from my  
10 stenographic notes so taken and transcribed under my  
11 personal direction this 16th day of January, 2008.

12  
13   
14  
15 Certified Shorthand Reporter

16  
17 CSR No. 084-003279 - Expires May 31, 2009.



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